



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-802]

Draft Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Request for Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) and State Atomic Energy Corporation Rosatom (Rosatom) have initialed a draft amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement). The draft amendment will allow the Russian Federation to export Russian uranium products to the United States in accordance with the export limits and other terms detailed in the amendment. Commerce is inviting interested parties, industrial users, and the public to comment on the text of the draft amendment to the Agreement.

DATES: Applicable September 11, 2020. Comments are due by 5:00 p.m. Eastern Time on September 28, 2020.

ADDRESSES: All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. See the SUPPLEMENTARY INFORMATION for additional details.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jill Buckles, Bilateral Agreements Unit, Enforcement and Compliance, International Trade Administration, U.S.

Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0162 or (202) 482-6230, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

On October 16, 1992, Commerce signed an agreement with the Russian Federation's Ministry for Atomic Energy (MINATOM), the predecessor to Rosatom, under section 734(l) of the Tariff Act of 1930, as amended (the Act), suspending the antidumping duty investigation on uranium from the Russian Federation.<sup>1</sup> There have been five amendments to the Agreement, the most recent of which was signed on February 1, 2008.<sup>2</sup> On February 22, 2019, Commerce formally opened consultations with Rosatom with respect to a possible extension of the Agreement's term.<sup>3</sup>

### Draft Amendment

On September 11, 2020, Commerce and Rosatom initialed a draft amendment to the Agreement. The draft amendment allows for exports of Russian uranium products to the United States in accordance with the export limits and other terms detailed in the amendment. In general, the draft amendment will reduce U.S. reliance on imports of uranium from Russia over the long term. Under the current Agreement, Russian uranium exports are limited to

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<sup>1</sup> See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; *Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220, 49235 (October 30, 1992).

<sup>2</sup> See *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 FR 15373 (April 1, 1994); *Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996); *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997); and *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 73 FR 7705 (February 11, 2008).

<sup>3</sup> See Letter to Rosatom from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Consultations on the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation," dated February 22, 2019.

approximately 20 percent of U.S. enrichment demand. Under the draft amended Agreement, the export limits will be equivalent to 24 percent of U.S. enrichment demand in 2021, 20 percent in 2022, 24 percent in 2023, 20 percent per year from 2024 to 2027, and 15 percent per year from 2028 to 2040. (Export limits are to be calculated on the basis of the World Nuclear Association's Lower Scenario, a 4.4 percent product assay, and a 0.3 percent tails assay.) These figures correspond to an average of approximately 17 percent over the next 20 years.

The draft amendment to the Agreement also strengthens existing protections for the U.S. commercial enrichment industry, by extending and reducing the Agreement's export limits, as discussed above.

The draft amendment to the Agreement establishes protections for U.S. uranium miners and the U.S. uranium converter by limiting sales of enriched uranium product (EUP) and sales of enrichment (*i.e.*, separative work units, or SWU) plus conversion under the export limits. Under the draft amendment, the cap on exports pursuant to EUP sales is equivalent to 15 percent of U.S. enrichment demand in 2021, 9.8 percent in 2022, 10.2 percent in 2023, 5.7 percent in 2024, 5.3 percent in 2025, and 5 percent per year from 2026 to 2040. The cap for additional exports pursuant to sales of SWU plus conversion is equivalent to 1 percent of U.S. enrichment demand in 2021, approximately 3 percent from 2022 to 2025, and zero percent from 2026 to 2040. These figures correspond to an average of 7 percent of U.S. enrichment demand for the combined EUP and SWU plus conversion limits over the 20-year period. The current Agreement contains no limits on sales of EUP or SWU plus conversion, other than the general export limits (which are equivalent to approximately 20 percent of U.S. enrichment demand, as noted above).

The draft amendment includes updated provisions with respect to natural uranium returned or provided by U.S. customers to the Russian exporter pursuant to sales of enrichment

(i.e., “returned feed”). The draft amendment fixes “returned feed” provisions in the existing Agreement that are detrimental to U.S. uranium miners and the U.S. converter. Specifically, under the current Agreement, foreign-origin returned feed can be delivered to the Russian exporter, enriched in Western Europe, and then exported to the United States outside the Agreement’s export limits. The draft amended Agreement would require foreign-origin returned feed that is enriched or sold in third countries to be subject to the Agreement’s export limits if exported back to the United States.

The export limits and other caps in the draft amendment are generally structured to allow U.S. customers to fulfill preexisting contractual obligations to purchase Russian uranium products.

The full text of the draft amendment to the Agreement follows in the Annex to this notice with the exception of Appendix 5 which contains business proprietary information and is releasable only under the Administrative Protective Order (APO).

#### Comment Period

Commerce invites interested parties to comment on the text of the draft amendment to the Agreement. In addition, industrial users such as utility companies, and the public, may also comment on the text of the draft amendment. Comments are due by 5:00 p.m. Eastern Time on September 28, 2020. Commerce will consider all comments received by the due date, and will formally address all timely filed comments from interested parties for purposes of a final amendment to the Agreement.

All information provided to Commerce will be subject to release under APO and should be submitted in accordance with 19 CFR 351.103 and 19 CFR 351.105 of Commerce’s regulations, including the service of copies of comments on interested parties to this proceeding.

The APO and public service lists in this proceeding can be found in ACCESS. Commerce will consider all comments received by the close of the comment period.

Dated: September 11, 2020.

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Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

## **Annex: 2020 AMENDMENT TO THE AGREEMENT SUSPENDING THE ANTIDUMPING INVESTIGATION ON URANIUM FROM THE RUSSIAN FEDERATION**

The Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation is amended as set forth below (2020 Amendment). All other provisions of the Agreement, as amended to date (Agreement), remain in force and apply to this Agreement.

**The last paragraph of the Preamble is amended as follows (*changes shown in italics*) and replaces the current paragraph:**

The Department and ROSATOM acknowledge that, for purposes of the Agreement, as amended (the “Agreement”), the successor in interest to MINATOM is the Federal Atomic Energy Agency. *The Federal Atomic Energy Agency is now known as the State Atomic Energy Corporation Rosatom* (“ROSATOM”). All references to MINATOM in this Agreement shall be understood to indicate ROSATOM. All exports of Russian Uranium Products are executed through the Russian Government-Owned entity *TENEX, Joint-Stock Company* (“TENEX”) (*formerly known as Techsnabexport*). All references to TENEX include its successors and its affiliated companies. All references to “Customs” shall be understood to indicate United States Customs and Border Protection.

**Section II – Definitions – This section is amended as follows (*changes shown in italics*):**

(o) “Effective Date of the 2008 Amendment” means *February 1, 2008, the date the 2008 Amendment was signed by both parties*.<sup>4</sup>

**The following additional sections are amended to replace “Effective Date” with “Effective Date of the 2008 Amendment”:**

**IV.A**

**IV.B**

**IV.B.1.a**

**IV.B.3**

**IV.B.4**

**IV.N**

**Appendix 3, section 1**

**Appendix 3, section 2**

**Insert new definitions following definition (f):**

(g) “Effective Date of the 2020 Amendment” means *the date on which this 2020 Amendment is signed by both parties*.

(h) “USEC” means *the Delaware corporation known, as of the Effective Date of the 2020*

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<sup>4</sup> See Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (73 FR 7705) (February 11, 2008).

*Amendment, as United States Enrichment Corporation, a subsidiary of Centrus Energy Corp., or its successor.*

*(i) - (k) (reserved)*

**Section IV.B.1 – Export Limits – Paragraph 1 is amended (*changes shown in italics*) by changing the numbering of paragraph 1 to sub-paragraph “1.a” and by adding additional sub-paragraphs as follows. The purpose of the amended section IV.B.1 is to insert export limits, and certain caps within those export limits, during the period from January 1, 2021 through December 31, 2040:**

*1.b The annual export limits for 2021-2040 are as follows (expressed in KgU as LEU, at a product assay of 4.4 percent and a tails assay of 0.3 percent, and in Kg U-235 content). In addition, caps for LEU exports pursuant to sales of EUP (which may include sales of SWU plus conversion), as well as caps for additional LEU exports pursuant to sales of SWU plus conversion only, are as follows.*

<u>Export Limit Year</u>	<u>Percentage of U.S. Enrichment Demand</u>	<u>Total Export Limit in KgU as LEU (A)</u>	<u>Total Export Limit in Kg U-235 Content (B)</u>	<u>Cap for LEU Exports Pursuant to Sales of EUP (may include Sales of SWU plus Conversion) in Kg U-235 (C) (Subset of B)</u>	<u>Cap for Additional LEU Exports Pursuant to Sales of SWU plus Conversion Only in Kg U-235 (D) (Subset of B)</u>	<u>USEC Export Limit Allocation in Kg U-235<sup>5</sup> (E) (Subset of B)</u>
2021	24%	596,682	26,254	16,409	1,094	7,780
2022	20%	489,617	21,543	10,556	3,231	7,430
2023	24%	578,877	25,471	10,825	3,277	10,700
2024	20%	476,536	20,968	5,976	2,834	10,200
2025	20%	470,376	20,697	5,485	2,834	10,300
2026	20%	464,183	20,424	5,106	0	10,700
2027	20%	459,083	20,200	5,050	0	10,600
2028	15%	344,312	15,150	5,050	0	4,100
2029	15%	340,114	14,965	4,988	0	0
2030	15%	332,141	14,614	4,871	0	0
2031	15%	328,862	14,470	4,823	0	0
2032	15%	322,255	14,179	4,726	0	0
2033	15%	317,536	13,972	4,657	0	0
2034	15%	298,088	13,116	4,372	0	0
2035	15%	294,511	12,958	4,319	0	0
2036	15%	286,066	12,587	4,196	0	0
2037	15%	281,272	12,376	4,125	0	0
2038	15%	277,124	12,193	4,064	0	0

<sup>5</sup> These numbers have been ranged. See Appendix 5, which contains a business proprietary version of Column E.

2039	15%	277,124	12,193	4,064	0	0
2040	15%	267,685	11,778	3,926	0	0

*These limits were derived from the Lower scenario U.S. enrichment demand projection data in the World Nuclear Association's 2019 "The Nuclear Fuel Report, Global Scenarios for Demand and Supply Availability 2019-2040." To match the projected reactor demand for subsequent years the Department shall, within 3 months following the update of that publication or its successor in 2023, 2029, and 2035, update these export limits by adjusting them to the new projections using 4.4% product assay and 0.3% tails assay based upon the Lower scenario. With each update, the Department shall also increase the total export limits for the remaining years by the net amount by which the export limits for previous years have fallen short of the export limits that would have been derived from the revised demand figures for those years, with any additional export allowances being divided equally between the revised export limits for the remaining years. Russian Uranium Products may be exported to the United States under a contract approved by the Department under this Agreement, even if such exports exceed the export limits in effect at the time of delivery.*

*Column B represents the maximum export limit quantity in Kg U-235 content for each Year of this Agreement. The following additional requirements apply:*

- i. Of the quantities in Column B, the quantities in Column C may be exported pursuant to sales of EUP (which may include sales of SWU plus conversion);*
- ii. Of the quantities in Column B, the quantities in Column D may be exported pursuant to additional sales of SWU plus conversion only, in addition to the quantities in Column C;*
- iii. The remaining export quantities ( $= B - (C + D)$ ) must be exported pursuant to sales of enrichment (i.e., SWU) only;*
- iv. For 2021-2028: of the quantities in Column B, the quantities in Column E may be imported into the United States by USEC pursuant to sales by TENEX to USEC of enrichment (i.e., SWU) in LEU, with return of natural uranium feed material to TENEX.*

*All contracts and contract amendments, as appropriate, for deliveries under the annual export limits must be approved by the Department under sections V.C.(1) and V.F of this Agreement.*

*1.c For 2021-2025:*

- i. Any delivery quantities under contracts or contract amendments concluded after March 31, 2020 must be pursuant to sales of enrichment (i.e., SWU) only and not sales of EUP or SWU plus conversion;*



ii. *If the EUP and/or SWU plus conversion caps exceed the actual imported shipment quantities, then the excess EUP and/or SWU plus conversion quantities will expire; and*

iii. *EUP and/or SWU plus conversion quantities may only be used for delivery quantities under contracts or contract amendments concluded prior to March 31, 2020 and may not be transferred from one contract to another.*

1.d *Where Russian LEU is sold into the United States under a contract for the sale of enrichment (SWU), or the sale of enrichment (SWU) plus conversion, the natural uranium feed quantity ( $UF_6$  or  $U_3O_8$ , as applicable) equal to the feed component of the LEU to be delivered must be returned or provided by the U.S. customer to TENEX at approximately the same time as the Russian LEU is delivered to the U.S. utility end-user (unless the Department has approved an extension), and, regardless of the location of the return or provision of natural uranium feed to TENEX (i.e., whether inside or outside of the United States), TENEX must certify to the following upon the importation of the Russian LEU:*

i. *The natural uranium feed returned or provided to TENEX by its U.S. customer shall be deemed to be of Russian origin (if it is not, in fact, already designated as being of Russian origin) for purposes of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation at the time of deposit, exchange, or return, and shall clearly be identified as being of Russian origin in all book accounting and all accompanying documentation and packaging;*

ii. *The natural uranium feed returned or provided to TENEX by its U.S. customer shall be immediately quarantined in a dedicated account exclusively for the accounting of this material at the relevant facility and shall not be sold, loaned, swapped, used as loan repayments or working stock, or utilized in any way other than in accordance with the terms of the Agreement;<sup>6</sup> and*

iii. *The natural uranium feed ( $U_3O_8$ , alone or as contained in  $UF_6$ ) returned or provided to TENEX by its U.S. customer and held in a dedicated account shall be either (i) exported to the Russian Federation within 18 months of the date that it is returned or provided to TENEX (whether inside of the United States or in a third country), or (ii) if returned or provided to TENEX in a third country, it may be sold and/or enriched in that or other third country with the following restrictions: (a) if the natural uranium feed contains  $U_3O_8$  that was not mined in the United States, then it shall retain its deemed-Russian origin subsequent to third-country enrichment and shall be subject to the terms of this Agreement, and*

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<sup>6</sup> *The requirement that returned feed must be credited to a dedicated account does not include the necessity to physically store such material separately from like uranium products of other customers or for other purposes; such material may be physically commingled at the storage location with any other like uranium products.*

*(b) if the natural uranium feed contains  $U_3O_8$  that was mined in the United States, then its origin will be conferred by the place of third-country enrichment. For purposes of the preceding sentence, “mined in the United States” means that the uranium is produced on or after the Effective Date of the 2020 Amendment at, or previously produced by and held in inventory of, a uranium mine or mill located in the United States; was not produced at a mine or mill directly or indirectly owned or controlled by the Government of the Russian Federation or an agency or agent thereof; and was not produced as a result of enrichment underfeeding or re-enrichment of depleted tails.*

**Section IV.D – is amended as follows (*changes shown in italics*), including by adding subparagraphs 1 through 4, and replaces the current section:**

*D.1 Carry-back: Except for any increase added pursuant to section IV.C, if, in any particular Year, the Department permits any Russian Uranium Products to enter the United States in excess of the export limit for that Year, the amount of the excess added to that Year may not exceed 10 percent of the export limit for that particular Year, and shall be ~~charged against~~ deducted from the export limit for the first subsequent Year or Years in which the export limit has not been contractually obligated in full. Carry-back is not permitted from any Year that is more than three years away.*

*D.2 Carry-forward: If the amount entered in any particular Year falls below the export limit for that Year, the amount of the shortfall may be added to the export limit for the subsequent Year or a Year that is not more than three years away only, up to 10 percent of the export limit for the particular Year in which the shortfall occurs.*

*D.3 The total amount carried back and carried forward to any particular Year may not increase the export limit for that Year by more than 10 percent. Any carry-back or carry-forward shall be contingent upon specific requests by TENEX and upon the Department’s express approval of such requests.*

*D.4 The carry-back and carry-forward provisions may only be applied to Department-approved contracts for sales of enrichment (i.e., SWU) only.*

**Section XII. – Duration – This section is amended as follows (*changes shown in italics*):**

~~*As of the Effective Date of this Amendment, each of the petitioners in the suspended investigation, or their legal successors, has filed with the Department an irrevocable letters expressly withdrawing the petition in the antidumping investigation, effective December 31, 2020. These letters are attached to this Amendment as Appendix 4. The Agreement will terminate on December 31, 2020. Upon its termination on December 31, 2020, the Department shall terminate the antidumping investigation effective on that date.*~~

~~*The Department, before February 1, 2008, the Effective Date of the 2008 Amendment, acknowledges the remand of the U.S. Court of International Trade of September 26, 2007, in *Techsnabexport v. United States*, Ct. No. 06-00228, including the Court’s direction that*~~

*“Commerce follow the precedent by which it is bound, articulated in the Eurodif cases.” As directed by the Court of International Trade, the Department will abide by the Eurodif decisions in its determination of the likelihood of continued or recurring dumping. Therefore, on the Effective Date, Techsnabexport will file a motion in Techsnabexport v. United States under Rule 41 of the U.S. Court of International Trade Rules. The United States will not appeal the September 26<sup>th</sup> decision in Techsnabexport v. United States.*

A. ~~In addition,~~ The Department shall conduct sunset reviews under 19 U.S.C. § 1675(c) in the years 2011, ~~and~~ 2016, 2022, 2028, and 2034. All parties agree that ~~these~~ sunset reviews shall be expedited, pursuant to 19 U.S.C. §§ 1675(C)(4) and (C)(3)(B), respectively, at both the Department of Commerce and the International Trade Commission. *Thereafter, the Department shall conduct sunset reviews under 19 U.S.C. § 1675(c) that follow the normal course (i.e., whether expedited or full, as applicable).*

B. *At the request of either party to this Agreement, the Department and ROSATOM shall enter into good-faith consultations on potential extension of this Agreement beyond its term, including through 2045 or beyond, and the parties will use their reasonable efforts to agree on extension of this Agreement and the associated terms within one year after the mentioned request for consultations.*

C. ~~MINATOM~~ ROSATOM may ~~terminate~~ provide notice of intent to terminate this Agreement at any time ~~upon notice to the Department~~. Termination shall be effective ~~60~~ 365 days after such notice is given to the Department. Upon termination at the request of ~~MINATOM~~ ROSATOM, the provisions of Section 734(i) of the Act shall apply, *as though the Department made a finding that the Agreement no longer meets the statutory requirements or a violation had occurred.*

D. If the Department has determined that a sufficient amount of time has elapsed between the effective date of this Agreement and the date of termination, the Department will follow the provisions of ~~Sections XIII.(b).XIII.A(b) or XIII.(c).XIII.A(c)~~ of this Agreement.

**Section XIV.B – Other Provisions – Paragraph B is amended as follows (*changes shown in italics*) and replaces the current paragraph:**

B. For all purposes relating to the Agreement, the Department and ROSATOM shall be represented by, and all communications and notices shall be given and addressed to:

Department Contact:

United States Department of Commerce  
Assistant Secretary  
for ~~Import Administration~~ Enforcement  
& Compliance  
International Trade Administration  
1401 Constitution Ave., N.W.  
Washington, D.C. 20230

ROSATOM Contact:

State Atomic Energy Corporation Rosatom  
~~State Secretary~~, Deputy Director General for  
International Cooperation  
24 Bolshaya Ordynka St., 119017 Moscow,  
Russian Federation ~~Federal Atomic Energy~~  
~~Agency (ROSATOM)~~  
~~Staromonetnyy per., 26, 119180~~

**Appendix 1 – This appendix is amended as follows (*changes shown in italics*).**

“1992 Sections IV.E-IV.G – remain in effect” **is changed to:**

*“1992 Sections IV.E and IV.F are changed to Sections IV.O and IV.P, respectively, and remain in effect.*

*1992 Section IV.G –remains in effect.”*

**Appendix 4 – This appendix is deleted in its entirety.**

**Appendix 5 – This appendix is added and contains business proprietary information.**

Signed on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**For the U.S. Department of Commerce:**

**For State Atomic Energy Corporation  
Rosatom:**

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**TBD**

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